Andrew H. Wilson, SBN 063209
WILSON, RYAN & CAMPILONGO
115 Sansome Street
Fourth Floor
San Francisco, California 94104
(415) 391-3900
Telefax: (415) 954-0938

Michael Lee Hertzberg
740 Broadway, 5th Floor
New York, New York 10003
(212) 982-9870

Laurie J. Bartilson, SBN 139220
MOXON & BARTILSON
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 960-1936
Telefax: (213) 953-3351

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	CASE NO. 157680 [LASC NO. BC-052395] [CONSOLIDATED] PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF MOTION TO COMPEL DEFENDANT GERALD ARMSTRONG TO ANSWER DEPOSITION QUESTIONS, AND FOR SANCTIONS DATE: January 27, 1995 TIME: 2:00 p.m. CALENDAR: Law and Motion HEARING JUDGE: Discovery Referee TRIAL DATE: May 18, 1995

I. INTRODUCTION

The issue here is actually very simple: The Church is trying to find out when, where, how and with whom Gerald Armstrong breached the settlement agreement ("the Agreement") which forms the basis of this action. Armstrong wants to keep the Church from discovering that information. He is liable to the Church for $50,000 in liquidated damages for each such breach; and proof of each such additional breach supports plaintiff's request for a permanent injunction which enforces all of the relevant terms of the Agreement.

In response to the Church's discovery requests, Armstrong has interposed two primary defenses: the defense that the information requested is privileged, private information, and the defense that the Church is "bad" and so, presumably, should not be allowed to take discovery.

As demonstrated in the moving papers, the Church's need for the requested discovery far outweighs any privacy interest which could be invoked by Armstrong. Moreover, most of deposition questions seek discovery of Agreement breaches by Armstrong. By signing the Agreement, and accepting the settlement funds, Armstrong has waived any privacy right which he might have claimed concerning his activities in violation of the Agreement.

Moreover, Armstrong's attempt to characterize the Church as "bad" and prejudice the Referee should be recognized as the irrelevant diversion that it is, and disregarded by the Court. As demonstrated by the attached declarations of Vicki and Richard Aznaran, the material contained in pages 3-4, 7, and 13 of Armstrong's oposition is nothing more than a litigation tactic used by Church opponents to try to prevent resolution of actual issues.

The Church requests that the Referee: (1) direct Armstrong to return to deposition to answer the noted questions, along with relevant follow-up questions; (2) supervise the deposition; and (3) require Armstrong to pay the costs of making this motion and the follow-up deposition, including and specifically 100% of the fees of the Referee.

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II. THE REQUESTED DISCOVERY IS DIRECTLY RELEVANT TO THE MATTERS ALLEGED IN PLAINTIFF'S COMPLAINT

A. Armstrong's Conversations Concerning Scientology Are Direct Violations Of The Agreement

Armstrong argues in his opposition that the Agreement does not prevent Armstrong from discussing matters concerning Scientology which he became aware of after the settlement or which are "public knowledge." [Oppo. at 3] Armstrong is mistaken. The Agreement actually provides, in paragraph 7(D) that:

> [Armstrong] agrees **never** to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or **to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. [Armstrong] further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above.** [Armstrong] expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. . . .

(Emphasis added). The scope of the Agreement is plain on its face: Armstrong agreed not to talk with anyone concerning his knowledge or information about plaintiff or related entities or individuals, whatever the source or date of that information. Further, he agreed that he would not "collect" further information about plaintiff or any of the related entities and individuals. Violations of this provision, along with violations of the provision in which Armstrong agreed not to voluntarily aid anti-Church litigants, are the basis for the lawsuit in which this deposition was taken. [Second Amended Complaint, Ex. F to Plaintiff's Request for Judicial Notice.]

In its motion to compel, the Church has asked Armstrong to identify persons with whom he spoke about the Church or Scientology; to relay the content of some of those

discussions; and to answer specific questions concerning aid which he has admitted he voluntarily provided to anti-Church litigants. These questions go to the heart of plaintiff's case. The underlying factual context is quite straightforward:

1. In 1986, the Church paid Armstrong a lot of money. In exchange, he gave up some of his rights and privileges, including the right to discuss plaintiff or its affiliated entities and individuals freely with other people.

2. In about 1990, Armstrong decided that he didn't want to abide by his promises any more, and began breaching the agreement.

3. The Church has asked Armstrong to stop. He has refused. The Church filed a law suit, and got an injunction against Armstrong. He still hasn't stopped.

4. Now, the Church is trying to find out how Armstrong has breached the Agreement, and with whom. The information is necessary if the Church is going to present its case at trial. In order to prevail on the 18th and 20th Causes of Action, the Church must show that it needs a permanent injunction against Armstrong, and that the permanent injunction must cover more provisions of the settlement Agreement than does the present, preliminary injunction.[1]

5. Armstrong is trying to prevent the Church from finding out about his breaches of the Agreement by asserting his right to privacy as to these conversations. Armstrong waived his right to keep these conversations private when he signed the Agreement.

6. The Church is entitled to find out with whom he spoke, and what he said to the people to whom he spoke. In each instance, he has admitted that the subject of the conversation included Scientology. The Church is not required to simply accept Armstrong's characterizations of the conversations in question as not violating the Agreement -- after all, Armstrong doesn't think anything he says or does violates the Agreement. The courts have

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[1] The preliminary injunction prohibits Armstrong from violating those provisions of the Agreement which do not include a liquidated damages clause. At trial, the Church will demonstrate that because of Armstrong's continuous refusal to abide by the Agreement, a permanent injunction should cover the non-disclosure aspects of the Agreement as well.

universally disagreed with him, and agreed with plaitniff on that issue.

Armstrong's claim that he may protect from disclosure both the names of individuals with whom he spoke in violation of the Agreement, and the contents of those conversations, in the interests of his private, associational rights is error. The requested discovery goes right to the heart of plaintiff's claim, and there is no other, less obtrusive means to obtain that discovery. As the California Supreme Court said in its most recent pronouncement on the subject, "'Not every act which has some impact on personal privacy invokes the protections of [our Constitution]. . . .[A] court should not play the trump card of unconstitutionality to protect absolutely every assertion of individual privacy.'" Hill v. National Collegiate Athletic Association (1994) 7 Cal.4th 1, 37, 26 Cal.Rptr.2d 834, 857, quoting Wilkinson v. Times Mirror Corp. (1989) 215 Cal.App.3d 1034, 1046, 264 Cal.Rptr. 194. The Hill case is ignored by Armstrong. Instead, he recites cases involving "fishing expeditions" for personal financial information, or political associations, none of which are relevant here. The Church has shown that it has a very specific need for particular information which is directly relevant to proof of plaintiff's claims. The information is either known only to Armstrong, or known only to Armstrong and third parties that he has refused to identify. Under these circumstances, the balancing test clearly favors disclosure:

> In order to facilitate the ascertainment of truth and the just resolution of legal claims, the state clearly exerts a justifiable interest in requiring a businessman to disclose communications, confidential or otherwise, relevant to pending litigation.

Valley Bank v. Superior Court (1975), 15 Cal.3d 652, 658-659, quoting In Re Lifschutz (1970) 2 Cal.3d 415, 425, 85 Cal.Rptr. 829, 835.

The assertion of privacy which Armstrong has made here is incoherent at best. He has already revealed the names of many of the persons whom he violated the Agreement, and has testified freely about some conversations. He may not pick and chose which evidence he will provide plaintiff, and which evidence he will decide is "private."

Moreover, the right to privacy, like any other right, can be waived. See, ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 262 Cal.Rptr. 773. In ITT

Telecom, the defendant, Dooley, was a former employee of ITT who signed a non-disclosure agreement during his employment. After leaving ITT, he accepted employment as an expert "consultant" to Intercomosa, a company in litigation with ITT. ITT sued Dooley for, inter alia, breach of contract, alleging that, while acting as Intercomosa's consultant, he had disclosed "confidential knowledge" about ITT in violation of his non-disclosure agreement. Dooley argued that he was protected from the breach of contract claim by the litigant's privilege (Civil Code § 47(b)). The Court decided that Dooley, by signing the non-disclosure agreement, had waived the litigant's privilege, noting "it is possible to waive even First Amendment free speech rights by contract," Id. at 319. So, here, Armstrong waived his right to claim a privacy interests in his conversations with third parties **when the conversations themselves violate Armstrong's contractual agreement.**

Here, Armstrong signed the Agreement to **never** discuss Scientology related matters with anyone. He did so at his peril. Moreover, the discussions which plaintiff is trying to discover into occurred **after** plaintiff had initiated litigation. Armstrong was thus fully on notice not simply that his discussions violated the Agreement, but also that the Church would be likely to inquire into them. He must be compelled to answer the questions.[2]

B. Armstrong's Work On The Aznaran Case -- What He Performed And When -- Is Also A Direct Violation Of The Agreement

Armstrong tries to characterize the questions which plaintiff's counsel asked concerning his employment by Mr. Greene as seeking "work product." They do not. Rather, they seek direct evidence of the violations of the Agreement by Armstrong which make up the 3rd and 4th Causes of Action. The questions asked sought direct evidence of Armstrong's employment by Greene on the Aznaran's case. At trial, plaintiff will be asked to demonstrate the extent of the aid which Armstrong provided to these anti-Church litigants in violation of his contract. Thus far, Mr. Greene has blocked all questioning of Armstrong beyond permitting him to testify that he helped to make copies of documents to be filed.

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[2] Any privacy interest which Armstrong or any third party could assert could easily be protected by conducting the deposition in front of the Referee.

Counsel asked Armstrong whether or not he and Greene discussed the exhibits to be assembled for the papers. The exhibits in question consist (just as do many of the exhibits here) of significant amounts of irrelevant material attacking, ad hominem, the Church and its lawyers. Armstrong's provision of aid to Greene in the assembling of these exhibits is not merely the performance of a ministerial function: it is a demonstration of the **substantive** anti-Scientology aid which Armstrong has provided to other anti-Church litigants. The question is plainly relevant.

The question also is not privileged. The exhibits were filed in court; the case in which they were filed has been concluded. The Church has no interest in Mr. Greene's mental impressions of that case, or of his "tactics" or "strategy" regarding it. It is **Armstrong's** provision of aid, in the form of tactics and/or strategy, that the Church seeks. And Armstrong may make no work product claim to **his** impressions: both the contract and the preliminary injunction herein prohibit him from imparting those to Mr. Greene at all.

C. Armstrong's Conversations With Wollersheim Concerning FACTI Are Both Relevant And Not Privileged

Armstrong and Wollersheim are both unabashed Church-haters and anti-Church litigants. That they would be friends is no surprise; that they might discuss Scientology together is also no surprise. However, for Armstrong to discuss Scientology with Wollersheim, and work with him to set up a computer database for use by anti-Church litigants is a **violation of the Agreement**. This violation forms the basis for the 18th Cause of Action in the Second Amended Complaint. The Church seeks direct evidence of Armstrong's involvment with Wollersheim in creating FACTI. There is no privilege that can protect Armstrong from revealing the contents of his conversations, in violation of the Agreement, with Wollersheim, and, indeed, Armstrong has not identified any in his opposing papers. Armstrong must be compelled to answer questions 7 through 9, together with follow-up questions.

III. ARMSTRONG'S ATTEMPT TO PREJUDICE THE REFEREE SHOULD BE SANCTIONED

Armstrong's second defense to plaintiff's meritorious motion is to fill the record with

inflammatory allegations that he was "enslaved," and that the Church practices "fair game." As demonstrated in the testimony of Reverend Lynn Farny, however, "fair game" was a long-cancelled, misunderstood doctrine which exists today only in minds of anti-Church litigants, who routinely make outrageous, but non-provable, allegations against the Church in an effort to gain sympathy and money. [Ex. A, Deposition of Lynn R. Farny, 477-485.]

"Fair game" was a term used in the Church for a short while in the 1960s. In 1968, the term was cancelled and has formed no part of the Church's scriptures since. As used for this brief time within the Scientology religion, "fair game" had not even the slightest resemblance to the wild accusations made by Armstrong. It meant simply that an individual who had renounced his participation in the Scientology religion, and was so designated, was no longer entitled to the protection of the Scientology system of justice if that person sought recourse for a presumed wrong. [Id., 478:18-479:8.]

The Church's adversaries use allegations of "fair game" as a litigation tactic against the Church. Indeed, it is only in the allegations of opposing counsel and apostates in which the term "fair game" survives. It is not Scientology doctrine and it never meant what Armstrong claims it to mean. It survives only because unscrupulous litigation adversaries use the term to attempt to poison a court's perception of the Church through allegations of fair game that are false, contrived or otherwise misleading. [Id., 477-485]

A fundamental premise upon which the Church's adversaries operate is that the litigation history of the Church reveals a likelihood that courts and juries will believe spectacular allegations made against the Church by a former member, without regard to plausibility, contrary evidence or the true facts. Armstrong himself expressed the concept best when he stated that a lack of documents or evidence was no impediment to litigating against the Church when the litigant can "just allege it" and then, when called upon to provide proof of the allegation, "just allege" that the Church destroyed any existing documents. [Ex. B, Video transcripts of conversations with Gerald Armstrong, Nov. 17, 1984, pp.28-29.] The active pursuit of that litigation approach led to the formation of a small group of disaffected former Scientologists. This stable of apostate witnesses (such as

Robert Vaughn Young) can be relied upon to furnish "corroboration" for any allegation against the Church.

To create prejudice against the Church a witness identifies an ugly event -- real, imagined, or just plain invented -- and then alleges that it was a deliberate act which was committed by the Church. The idea is to create the false impression that the Church is committing acts of retribution in pursuit of "fair game."

Two of Armstrong's declarants, Vicki and Richard Aznaran, are very familiar with this tactic, having engaged in it themselves during the pendency of their suit against the Church. Both subsequently executed declarations concerning this calculated and misleading practice on the part of anti-Scientology litigants [Ex. C and D.] Ms. Aznaran states in part:

> The policy was misinterpreted by others and was thus canceled. It has since been used by litigants over the years as a vehicle to give credibility to allegations to try to prejudice courts against Scientology. An event happens such as someone's wife dies in a car accident, and the allegation is made that this is a murder committed by the Church pursuant to "Fair Game" policy. This technique is known to those who attack the Church and so they continue to use this term to try to prejudice the courts. These people feel comfortable making scandalous allegations, knowing that the Church does not have such a policy.

[Ex. C, Declaration of V. Aznaran at ¶ 9.]

Ms. Aznaran was apparently not above resorting to that litigation ploy herself, as is shown by the fact Armstrong is reduced now to reliance upon a variety of statements which she offered as declarations in legal proceedings which she has admitted only served to prejudice matters against the Church. "Fair game" is only used as a litigation ploy by Church opponents. Armstrong should be sanctioned for attempting to use it here.

IV. CONCLUSION

Armstrong and his counsel have improperly obstructed the discovery process in this litigation. This is not the first motion to compel Armstrong's deposition testimony on highly relevant subjects, but the second. Further, as to some questions, the same objection was interposed which had by overruled by the Court nearly two years ago. In response, Armstrong has recited inflammatroy rhetoric, and filled the record with irrelevant material.

Armstrong must be compelled to answer the questions, and he and his counsel ordered to pay attorney fees and costs incurred by the Church in bringing this motion and as a consequence of the further day of deposition made necessary by their obstruction, pursuant to C.C.P. §§ 2023(a)(4),(5),(7) and §§ 2023(b)(1).

Dated: January 25, 1995

Respectfully submitted,

MICHAEL LEE HERTZBERG

MOXON & BARTILSON

By: _____
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On January 25, 1995, I served the foregoing document described as PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF MOTION TO COMPEL DEFENDANT GERALD ARMSTRONG TO ANSWER DEPOSITION QUESTIONS, AND FOR SANCTIONS on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

William R. Benz, Esq.
900 Larkspur Landing Circle, No. 185
Larkspur, CA 94939

[x] BY FAX AND MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on January 25, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on _____ at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Bahl
Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

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[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[x] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

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[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Bath
Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)